

S. Kramer
P. L. I

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

8838

FILE: B-193002

DATE: January 12, 1979

MATTER OF: Robert W. Selzer - [Retroactive Temporary
Promotion and Backpay]

DIGEST:

Federal Highway Administration employee filed with GAO on August 26, 1976, a claim for retroactive temporary promotion and accompanying backpay incident to an alleged detail to a higher grade position from November 12, 1968, to the present. On August 24, 1969, employee was reassigned in grade to a position which encompassed the duties of the detail thereby terminating the detail. Claim may not be considered since Act of October 9, 1940, as amended, 31 U.S.C. § 712, provides that claims presented to GAO more than 6 years after date claim accrued are barred.

This action is in response to a letter from Mr. Robert W. Selzer an employee of Region 7, Federal Highway Administration, Department of Transportation, which constitutes an appeal from our Claims Division settlement of August 22, 1978. Mr. Selzer's claim for a retroactive temporary promotion with backpay was disallowed on the grounds that the claim was barred by the statute of limitations.

On November 12, 1968, Mr. Selzer was allegedly detailed to perform the duties of Regional Emergency Transportation Representative (RETREP) for Region 7. At the time of his assignment Mr. Selzer was in grade GS-13. In his appeal, Mr. Selzer contends that by being assigned the duties of a RETREP he was detailed to an established position at a higher grade level (GS-14) and therefore is entitled to a retroactive temporary promotion and backpay for the period November 12, 1968, to the present.

The record shows that on August 26, 1976, Mr. Selzer filed his claim with our Claims Division. The claim was based on decisions which entitled employees detailed to higher grade positions for more than 120 days, without Civil Service Commission approval, retroactive temporary promotions with backpay for the period beginning with the 121st day of the detail until the detail is terminated. Matter of Marie Grant, 55 Comp. Gen. 785 (1976); Matter of Everett Turner and David L. Caldwell, 55 Comp. Gen. 539 (1975).

~~003217~~

Dec.

B-193002

Pursuant to 31 U.S.C. § 71a (Supp. V, 1975), any claim or demand against the United States is barred unless it is presented to the General Accounting Office within 6 years from the date such claim accrues. Since Mr. Selzer's claim was not received in our Claims Division until August 26, 1976, all elements of his claim accruing before August 26, 1970, are barred. Matter of Lewis A. Cope, B-191472, May 17, 1978. We are without authority to waive or modify the application of this statute. Matter of John B. Moore, B-187427, June 3, 1978.

In relation to the above, Mr. Selzer was reassigned in grade on August 24, 1969, to a position classified on August 14, 1969, as a Highway Engineer, GS-810-13, responsible for serving "in the capacity of Regional Emergency Transportation Representative (RETREP) Regional Emergency Planning Engineer, and as a Special Staff Assistant." Therefore, any detail to which Mr. Selzer may have been assigned would have terminated on August 24, 1969. Since Mr. Selzer was assigned to a position in grade GS-13 the duties of which included those of Regional Emergency Transportation Representative, no detail was in effect during the period subsequent to the barred period covered by his claim. Any appeal rights he may have had regarding his assignment to RETREP duties while occupying a GS-13 position were for consideration as a position classification matter by the Civil Service Commission. Cf. Matter of David A. Webb, B-190695, July 7, 1978; Matter of Edward Rothenberg, B-187234, December 8, 1976; B-173831, September 3, 1971.

Accordingly, Mr. Selzer's claim for a retroactive temporary promotion with accompanying backpay is denied and the action of our Claims Division is sustained.


Deputy Comptroller General
of the United States